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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

KELLY CAHILL SARA JOHNSTON,
LINDSAY ELIZABETH, and HEATHER
HENDER, individually and on behalf of
others similarly situated,

Plaintiffs,

vs.

NIKE, INC., an Oregon Corporation,
Defendant.

Case No. 3:18-cv-01477-JR

DEFENDANT NIKE, INC.'S RENEWED
REQUEST FOR ORAL ARGUMENT ON
NIKE, INC.'S OBJECTIONS TO THE
MAGISTRATE JUDGE'S FINDINGS &
RECOMMENDATION DATED
OCTOBER 11, 2023 (ECF NO. 363)
PURSUANT TO FED R. CIV. P. 72 AND
CONDITIONAL REQUEST FOR
EMERGENCY STAY

ORAL ARGUMENT REQUESTED

Renewed Request for Oral Argument and Request for Emergency Stay

On October 25, 2023, NIKE filed its objections to the Magistrate Judge’s Findings and Recommendation dated October 11, 2023 (the “Findings”) granting the Non-Party Media Organizations’ (the “Intervenors”) Renewed Motion to Unseal Judicial Records (the “Renewed Motion”). NIKE requested oral argument because its objections raise serious and important legal questions. NIKE hereby renews that request. While NIKE continues to believe in its position, NIKE is concurrently filing a motion (on an expedited basis) seeking a stay pending appeal of the Court’s decision in the event that the Court overrules NIKE’s objections to ensure that Plaintiffs do not furnish records currently redacted to the Intervenors for publication while that appeal is pending.

That motion notwithstanding, at any oral argument, NIKE would seek an additional stay of proceedings if the Court overrules NIKE’s objections to account for the period before the Court may consider and rule on NIKE’s emergency motion for stay. Without a stay in place during this period, Plaintiffs could and likely would provide unredacted versions of documents that are now-redacted to the Intervenors, which, in turn, would publicize such information even though NIKE would seek an emergency stay and an appeal.¹ ***Thus, in the event NIKE does not have the opportunity to express this in oral argument, NIKE requests an immediate stay of the***

¹ Intervenors requested that unredacted versions of the following be publicly filed: Exhibit 46 to the Declaration of Mengfei Sun in Support of Plaintiffs’ Motion for Class Certification, ECF No. 284–6; Exhibit 47 to the Declaration of Mengfei Sun in Support of Plaintiffs’ Motion for Class Certification, ECF No. 284–7; Exhibit 48 to the Declaration of Mengfei Sun in Support of Plaintiffs’ Motion for Class Certification, ECF No. 284–8; Exhibit 51 to the Declaration of Mengfei Sun in Support of Plaintiffs’ Motion for Class Certification, ECF No. 285–1; Exhibit 52 to the Declaration of Mengfei Sun in Support of Plaintiffs’ Motion for Class Certification, ECF No. 285–2; Paragraph 16 of the Declaration of Byron Goldstein in Support of Plaintiffs’ Motion for Class Certification, ECF No. 288; Exhibit 9 to the Declaration of Byron Goldstein in Support of Plaintiffs’ Motion for Class Certification, ECF No. 290–4. ECF No. 343 at 5.

Court’s Order adopting the Magistrate Judge’s findings while NIKE’s emergency motion for stay is under consideration.

As argued in that motion, a stay should be granted during this interim period for the same reasons why it is necessary pending appeal—because a stay avoids irreparable injury and protects the subject matter of any appeal. The Plaintiffs likely would provide, and the Intervenor likely would seek to immediately publicize, unredacted documents containing the identities of complainants, witnesses, and subjects of internal complaints listed in certain, limited documents before the Court rules on NIKE’s motion to stay. *See* ECF Nos. 343, 346. Publication of this information is likely to cause emotional and reputational harm and other injury to the individuals named in the redacted records, and once the unredacted records are publicly filed, the information within them can never be fully clawed back. *See Ball v. Skillz Inc.*, No. 220CV00888JADBNW, 2020 WL 10180904, at *2 (D. Nev. Nov. 16, 2020) (finding irreparable injury absent stay because of inability to claw back plaintiff’s anonymity from public record); *see also Align Tech., Inc. v. SmileDirectClub, LLC*, No. 23-CV-00023-EMC, 2023 WL 2347431, at *1 (“[When] the information is publicly filed, what once may have been [confidential] no longer will be”) (quoting *Apple, Inc. v. Samsung Elecs. Co.*, No. 11-CV-01846-LHK, 2012 WL 3536800, at *1 (N.D. Cal. Aug. 15, 2012)).

A stay also is in the public interest, there would be little to no injury to the Intervenor if a stay is granted, and NIKE’s objections raise serious and important legal questions related to individual’s privacy interests on the merits. Therefore, if NIKE’s objections are overruled, NIKE requests an immediate stay during the Court’s consideration of its motion to stay.

Date: December 21, 2023

/s/ Daniel Prince
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